

Application # 09/921,542  
RCE Preliminary Amendment dated March 6, 2006  
Reply to Final Office Action dated March 15, 2005

PATENT  
P-5204

### REMARKS

Claims 1 -18 have been cancelled.

New claims 19 to 30 have been added by this preliminary amendment. No new matter has been added.

Claims 19 to 30 are now pending in the present application.

### Claims Rejection – 35 USC § 102

Claims 1-4 and 6-10 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,974,018 to McNeilly ("McNeilly").

This rejection is addressed as to new claims 19 to 30 made herein. New Claim 19 is independent with the remaining claims dependent thereon.

New Claim 19 is directed to a system, said system comprising:

*a plurality of sample vessels, each of the sample vessels comprising a growth medium and a stirrer, the stirrer capable of being influenced by a magnetic force; and  
an incubation and measurement module comprising*

*at least one panel comprising a plurality of openings for holding the  
sample vessels, and*

*a magnet driver comprising a plurality of magnets,*

*wherein each of the openings corresponds with one of the magnets, wherein the magnet driver is adapted to repeatedly move each magnet proximate to and distant from the surface of a corresponding sample vessel when located in the corresponding opening, and wherein the openings are configured to hold the one or more sample vessels such that the longitudinal axis of the vessels are at an angle of less than 90° with the horizontal.*

McNeilly teaches an improvement to the Van Slyke volumetric apparatus for determining the gas content of blood, of the type where mercury is used as the confining fluid. McNeilly discloses, as reflected in Figs. 1, 2 and 3, an upright sample vessel (46) containing a stirring bar (50) comprising of magnetic material, a first magnet (74) adjacent to the vessel, means (72) (76) for rotating the first magnet and a second magnet (78) fixedly mounted adjacent to and above the first magnet, the second magnet also being adjacent to the upright sample vessel.

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Applicants respectfully point out McNeilly fails to disclose each and every element of new claim 19.

Thus, McNeilly does not anticipate new claim 19.

For these reasons, applicants submit that new claim 19 and dependent claims 20-30 are not anticipated by the McNeilly reference.

In view of the amendments and remarks herein, applicants submit the claims are patentably distinct over the prior art and allowable in form.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 02-1666.

If the Examiner has any questions or comments relating to the present application, he or she is respectfully invited to contact Applicant's agent at the telephone number set forth below.

Respectfully submitted,



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